

**DIVISION OF HEALTH CARE QUALITY AND
OVERSIGHT**

**Licensing Standards for Home Health Agencies
Identification Badges for Homemaker-Home Health Aides; Consumer
Guide Regarding Homemaker-Home Health Aides; Electronic
Signatures Consent Forms**

Proposed Amendments: N.J.A.C. 8:42-3.1 and 11.2

Authorized By: Clifton R. Lacy, M.D., Commissioner, Department of
Health and Senior Services (with approval of the Health Care
Administration Board).

Authority: N.J.S.A. 26:2H-5d.

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2004-250.

Submit comments by September 4, 2004 to:

John A. Calabria, Director
Certificate of Need and Acute Care
Licensure Program
New Jersey Department of Health and Senior Services
P.O. Box 360, Room 403
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

N.J.A.C. 8:42 was last amended in August 2000, with active participation from the Home Health Advisory Committee, comprised of representatives from the Home Health Assembly of New Jersey, the Home Care Council of New Jersey, the Home Health Services and Staff Association, the Department of Human Services (Medicaid) and the gerontology, planning and licensing divisions within the Department. Thus, it is in the public interest to continue maintaining standards of quality assurance, minimum care requirements, access to home health care and defined service offerings.

The Department is currently proposing amendments to two sections of the Home Health Agency Licensing Standards. First, under N.J.A.C. 8:42-3.1, Compliance with rules and laws, the Department has added N.J.A.C. 8:42-3.1(f) concerning identification badges for homemaker-home health aides; and N.J.A.C. 8:42-3.1(g) concerning the provision of a

consumer guide regarding homemaker-home health aides. N.J.A.C. 8:42-3.1(f) requires each licensed home health agency to provide each patient, or their designee, the name and certification or licensure title, as applicable, of the homemaker-home health aide or other health care professional. Agencies are required to provide photo identification tags to their employees with this information and to develop policies and procedures that require these tags to be worn in an easily visible place upon their person at all times while examining, observing or caring for patients. In addition, N.J.A.C. 8:42-3.1(g) requires that a copy of the most current edition of the consumer guide to homemaker-home health aides published by the New Jersey Board of Nursing must be provided in advance of the provision of services, whenever possible, or at the time of the initial visit to the patient's home.

Second, under N.J.A.C. 8:42-11.2, Medical/health records policies and procedures, the Department has added N.J.A.C. 8:42-11.2(b) concerning electronic signatures of health care providers and patient signatures on consent forms.

Because a 60-day comment period has been provided on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments at N.J.A.C. 8:42-3.1(f) concern identification badges for homemaker-home health aides and those at N.J.A.C. 8:42-3.1(g) concern the provision of a consumer guide regarding homemaker-home health aides. Patients will benefit from a heightened sense of security brought about by a pictured identification badge that confirms the identity of the homemaker-home health aide that is seeking entry into their place of residence. The provision of a current consumer guide will also assist the patient to become better informed regarding the array of services that are available from licensed home health agencies.

Each of these amendments will benefit consumers and, thus, will have a positive social impact. The proposed amendments at N.J.A.C. 8:42-11.2(b) concern electronic signatures of healthcare providers and patient signatures on consent forms. The first of these amendments provides increased security for Medicare, Medicaid and other insurance providers. The second offers additional safeguards to patients and health care providers. Both will have a positive social impact.

Economic Impact

Agencies employing homemaker-home health aides and other healthcare providers may have increased costs at the outset. They will have to create and supply the identification badges. The State Board of Nursing already produces the required guide, but there may be increased printing and distribution costs. No costs are expected regarding the electronic signatures for healthcare providers or patient signatures on consent forms.

Federal Standards Statement

There are no Federal standards or requirements applicable to these proposed amendments. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not expect that there will be any impact on jobs, including the generation or loss of jobs, as a result of the proposed amendments.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry.

Regulatory Flexibility Analysis

The amendments related to homemaker-home health aides may have an effect on small businesses (as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.) private industry because they require compliance by health care service firms and home health agencies which will produce and/or distribute identification badges and consumer guides. These requirements are mandated by statute, P.L. 2002, c.81, effective September 5, 2002, which amended N.J.S.A. 26:2H-5d and are necessary in order to protect the health and safety of New Jersey's citizens.

As far as the cost and professional services that are needed as a result of these amendments is concerned, there are some limited costs associated with the requirement for a pictured identification card for all homemaker-health care aides and the provision of a current consumer guide. These costs are minimal and are considered necessary to assure patient safety and consumer confidence in the provision of health care services that are delivered at home. Some of these home healthcare service firms and home health agencies may wish to contract with photographers or businesses which specialize in the fabrication of

identification badges but such professional services are not necessary to comply.

Because these requirements have been designed for the health safety and welfare of the public, the rules must be applied uniformly, regardless of business size.

The absence of regulatory flexibility in the language of this proposal is due to the lack of flexibility of the statutory language of P.L. 2002, c.81, which is replicated in these proposed amendments.

Smart Growth Impact

The proposed amendments shall not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

8:42-3.1 Compliance with rules and laws

(a) - (e) (No change.)

(f) Each home health agency licensed pursuant to N.J.S.A. 26:2H-1 et seq. shall provide the following information to each patient receiving home-based services from that agency, or to a person designated by the patient:

1. The name and certification or licensure title, as applicable, of the homemaker home health aide or other health care professional whose practice is regulated pursuant to Title 45 of the Revised Statutes.

i. Agencies shall issue an identification tag to each homemaker-home health aide, and other health care professional in their employ.

ii. Agencies shall develop policies and procedures that require homemaker-home health aides, and other health care professionals, in their employ to wear identification tags in an easily visible place upon their person at all times while examining, observing, or caring for the patient;

2. A photograph of the homemaker-home health aide or other health care professional that shall be included on the identification tag required pursuant to (f)1 above; and

3. A copy of the most current edition of the consumer guide to homemaker-home health aides published by the New Jersey Board of Nursing.

(g) The consumer guide required pursuant to (f)3 above shall be provided:

1. In advance of the provision of services to the patient, whenever possible; and

2. Otherwise upon the homemaker-home health aide's initial visit to the patient's home.

8:42-11.2 Medical/health records policies and procedures

(a) (No change.)

(b) All entries in the patient's medical/health record shall be typewritten or[,] written legibly in ink, and shall include date, signature and title, or computer generated with authentication if an electronic system is used.

1. If a computer rather than a hard copy is used to maintain patient records, an electronic signature generated with authentication may be used.

2. "Authentication," as defined by the Centers for Medicare and Medicaid Services (Health Insurance Manual Publication 11 [HIM-11]), must include signatures, written initials, or computer secure entry by a unique identifier of a primary author who has reviewed and approved the entry. Furthermore, the home health agency must have safeguards to prevent unauthorized access to the records and a process for reconstruction of the records in the event of a system breakdown.

3. All forms signed by the patient must be dated and included in the medical record.

(c) - (h) (No change.)